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FILE NO. S-256

FINANCE:
Illinois Purchasing Act
Professional Consultant

Honorable David J. Regner
Chairman
State Property Insurance Study Commission
State House
Springfield, Illinois 62706

Dear Sir:

I have your letter wherein you state as follows:

"The State Property Insurance Study Commission of which I'm Chairman intends to engage a professional consultant to complete some of the work of the Commission which none of the members are qualified to do.

The State Purchasing Act states that it is necessary to have vendors bid on work or items which will be in excess of \$1,500.00; however, Chapter 127,

Paragraph 132.6 - #2 states, 'Bidding is not required in the following cases: (2) where the services required are for professional, technical, or artistic skills.' Also, Chapter 127, Paragraph 132.9a states that if there is no bid on a contract for professional skills, a copy must be filed with the Auditor General. I, therefore, assume that if our commission engages a consultant for a specific job and files a copy of the contract with the Auditor General, we are in conformance with the Illinois Purchasing Act."

The Illinois Purchasing Act (Illinois Revised Statutes 1969, Chapter 127, Paragraph 132.1 et seq.) provides as follows:

Paragraph 132.6

"* * * * *

* * * bidding is not required in the following cases:

* * * * *

(2) Where the services required are for professional, technical or artistic skills.

* * * * *

Paragraph 132.9a

"Whenever any State agency contracts for services involving professional, technical or artistic skills and involving an expenditure of more than \$1,500, which contract is exempt from

competitive bidding by reason of subparagraph (2) of paragraph a. of Section 6, a copy of the contract, if written, shall be filed with the Auditor General. If the contract is oral, a written memorandum setting forth all details of the contract shall be filed with the Auditor General. All copies of contracts and all written memoranda filed pursuant to this section are public records."

The Act expressly exempts, from bidding, services for professional skills. Obviously, this includes consulting services of this nature. You would be in conformance with the Illinois Purchasing Act by filing a copy of the contract with the Auditor General.

You probably are aware that the State Finance Act (Illinois Revised Statutes 1969, Chapter 127, Paragraph 137 et seq.) provides in connection with these contracts as follows:

Paragraph 167.01

"No voucher shall be submitted to the Auditor of Public Accounts for a warrant to be drawn for the payment of money from the State treasury on account of any contract for services involving professional, technical or artistic skills which is subject to Section 9.01 of 'The Illinois Purchasing Act'

unless the provisions of that Section have been complied with. In addition, any voucher for payment for professional, technical or artistic skills which is in excess of \$1500, shall state that it is a voucher for payment for professional, technical or artistic skills and whether a copy of the contract or a memorandum for such services has been filed with the Auditor General as required by that Section."

I do not mean to imply by the foregoing that any person or service called "professional consultant" is automatically exempt from application of the bidding requirements of this Act. It is not the name that is used which determines the inapplication of the Act but rather the nature of the services rendered.

I am not sure from your letter if you have any question as to whether the particular services involved are professional in nature. In view of this, I think it is incumbent to point out to you that the term "professional" as used in the foregoing cited statutory provisions does not, in my opinion, have a definite and set meaning. It is to be noted that the word "professional" is used with the words "technical or artistic skills". It is a principle

of statutory construction that associated words may be used to determine the meaning of a doubtful word. This is known as the principle of noscitur a sociis (a word is known by the company it keeps.) See 2 Sutherland, Statutory Construction 3rd ed., page 393. It is easily seen from this that the word "professional" is not limited to those members of certain long established and recognized professions such as medicine, law, theology, etc. It is a matter of common knowledge that an essential element involved in services of a professional, technical or artistic nature is confidence, trust and belief in not only the ability but the talent of the person performing the services. Furthermore, it is well recognized that these services primarily are not work or labor oriented in the usual sense of the word but instead they are basically a mental product. Many services are clearly and ipso facto within this exception as a natural result of the particular profession or skill involved. On the other hand there are services which may or may not be included in this exception depending upon the facts and details of the particular

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services to be rendered. If you have not already made this determination, it is probable that you can do so without any difficulty. Should you need any more legal advice in this regard, I will assist at your request.

Very truly yours,

A T T O R N E Y G E N E R A L